

BOARD OF ZONING APPEALS

Minutes

October 29, 2001

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on October 29, 2001, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: JOHN ROGERS, BICKLEY FOSTER, BRADLEY TIDEMANN, JAMES RUANE, FLOYD PITTS, and JAMES SKELTON. RANDY PHILLIPS, arrived at 1:40 p.m.

The following Planning Department staff members were present: DALE MILLER, Secretary, SCOTT KNEBEL Assistant Secretary, ROSE M. SIMMERING, Recording Secretary.

Also present: DOUG MOSHIER – Assistant City Attorney.

Also present: J. R. COX – Commercial Plan Review/Commercial Zoning -- Office of Central Inspection.

TAPE BEGINS A LITTLE LATE

FOSTER: Have we received any information as to why they want to have this reheard. Unless you have something I don't.

RUANE: I don't have it, and that is the reason why I think that we need to first look at the...

FOSTER: I would presume the applicant would be here to present that.

RUANE: I am sure they are here, but we need to determine whether or not there is reason to let them make a presentation.

FOSTER: In the past, I might point out, that we have had executive session. In fact, we have had two or three of them over the years to discuss and deliberate on a matter such as this. After you hear it, after you have received the information, if you feel it needs to be deliberated, we have done that two or three times in the past. But we need to receive the information as to why they are requesting that it be heard.

RUANE: Is that City Law Department opinion?

MOSHIER: What part of that? This is a quasi-judicial body, and it is my legal opinion that the Board can, at the close of all of the evidence of the record, it can deliberate in closed session if it chooses to do so.

RUANE: But that wasn't what we were talking about. Did you know the questions? Were you listening?

MOSHIER: I am sorry. I thought that was what Bickley was talking about.

FOSTER: My point was that it seems to me that we need to hear something first that tells us what they want done.

RUANE: What distinguishes this from the early request...

FOSTER: Then we can decide whether to debate it then or to go into closed session.

MOSHIER: Absolutely. I don't think you can make a determination whether any facts have changed without knowing from the applicant what those are. That is exactly correct.

RUANE: Thank you. Then I will back track, and we will be at Item #1: the approval of the BZA minutes for the month of September. Rose has just handed out a very quickly prepared revised draft of the minutes. The comments are mine. I would ask in the interest of time and speed that we go through those. Dale Miller, in particular, I want your input on this because I think that Dale, as our Secretary, you need to have some input on these draft minutes before they get to us.

Now, again, this is Agenda Item #1 with regard to the minutes, and I will try to make this quick. You see there is a combination of suggestions for some process improvements that I don't wish these to be changed in these minutes. There are some things which simply are modifications to the minutes that I request.

On page one, after my name where it says "Let me interrupt" does everybody follow the corrections that I have made there having to do with the fax? Last month I faxed in a similar set of these changes but it never made its way to you so we went through a long process by which I had to read all the changes. I am trying to avoid that this month by insisting that these be passed out.

I want a decision to be made as to someone from staff who will be responsible for giving this a little higher order or a higher level of review before they are circulated to us further. In particular the section that involves the audience and the accommodations made with regard to the PA system. That needs to be greatly

abbreviated. I think the end result was that we had a gentlemen who couldn't hear, and we told him to move and he moved and he could hear.

On page 5, I am not really sure what I want other than some clean up and some abbreviation.

On page 15, the second to the last paragraph...

FOSTER: What was the problem with page five?

RUANE: I do not see a problem. That is not even an editorial comment. It is just a suggestion for a process improvement. So make that note that it is not a correction. Frankly, on page 15, I understand that the comment attributed to me, "Is the differential the logical key?" I probably said that but I don't think that makes any sense at all.

MILLER: I guess that is what I would raise the issue. These are verbatim minutes. Now if we go through and fix these, then they are not verbatim minutes.

RUANE: I do not require verbatim minutes.

MILLER: But, I think that has been our practice since these are the minutes that go to court.

RUANE: Well then the word "too" something more than spell check is going to be necessary.

MILLER: On the word "too" I understand that. But in terms about the discussion, about the PA, and that sort of thing, that all occurred, so I think that is pretty dangerous to change.

RUANE: That could be material to a challenge? We have some editorial privilege surely.

MILLER: My concern is guessing what is to be editorialized and deleted and what is not can get us into trouble. I personally have done minutes for Planning Commission, and I know how difficult it can be because it is amazing how often people mis-speak.

RUANE: I know that I am far from perfect.

MILLER: But we will certainly try and review them closer.

RUANE: If you take these into account, in particular I see no need for verbatim

minutes when we have I don't know if you remember the exchange, we had an elderly gentlemen, he couldn't hear, he couldn't see, he had chosen a place to seat himself where there was no way he was going to hear or see anything and the meeting was going to go at a snails pace unless we moved him up here where he could see and hear what was going on and so that is what we did. So in that instance because it had nothing to do with the merits of the matter that we were discussing, I just fail to see the need for verbatim minutes.

RUANE moves FOSTER seconds to approve the September 25, 2001, meeting minutes with those changes.

FOSTER: I don't know whether, Randy, you don't have a copy do you?

RUANE: Rose, would you provide Randy with a copy of what we are discussing?

FOSTER: Randy you weren't here anyway.

MILLER: He will have to abstain.

RUANE: He may want to abstain, anyway. But I am suggesting some processing improvements for how we could expedite the process of the minute approval for further meeting minutes down the road. We have on the table a motion to approve the minutes as amended via my comments in the margins etc. Make particular note of those things that are not amendments but are merely process improvements which I think that Dale, Bickley, and I have already discussed. If there is any further discussion with the regard to the minutes I would ask that be had now.

MOTION CARRIES 6-0-1.

RUANE: We are now onto Agenda Item #2, BZA2001-00050. It is a Variance request to increase the maximum height of a building sign for Dick's Sporting Goods from 30' to 38'6" on property zoned "LC" Limited Commercial.

We first, as I understand it and Doug tell me if I am wrong, Doug Moshier tell me if I am wrong, I believe that we first need to hear from the applicant on the subject of what is the difference between this application and the one heard last time this matter was before us, is that correct?

MOSHIER: I think that is correct.

RUANE: So limit your presentation to the subject of the difference between the last request and this.

PHILLIPS: Mr. Chairman, at this point, I do need to declare a conflict of interest, so I will abstain and step down until we are done with this case and then I will return to the Board for the next case.

RUANE: Ok, does that mean that you will sit in the audience as well?

PHILLIPS: Yes, that is fine. I will step back from the table. We have provided some architectural services, not for Mr. Ablah, but for Bundy and Associates.

RUANE: So that has to do with Items #2 and #3?

PHILLIPS: No just Item #2 anything related to this particular case.

CHRISTIAN ABLAH, CLASSIC REAL ESTATE, 8200 E 32ND STREET N., WICHITA KS 67226: The specific difference between the last time that we were here, I think it was August 28th, we were talking about 43'6" in height on the building and now we are simply talking about a reduction of that to 38' as opposed to the 43'6".

The other change that the applicant has made, that Dick's Sporting Goods has made, is a concession and an adjustment to the height of their letters. Their letters were 9', and now they intend for those to be 8' as a concession. So those are the two changes that Dick's Sporting Goods feels are a substantial or material change. I would be open for discussion. In their minds, that is quite a bit different than what was presented before and would like to be heard and get into this in more detail, but quite frankly those are the differences.

RUANE: Is there someone here from Dick's to present as well?

ABLAH: No. They are out of Pennsylvania. There is an attorney out of Pennsylvania that I work with, and they have been here in town three times. But there is no one here today.

RUANE: What makes this quite a bit different, as Dick's representative?

ABLAH: In the staff's mind, and I don't want to speak for staff, but every foot seems to be monumental. I would like the case to be heard by everyone on the BZA because I feel that it does warrant being heard and I think that one could argue it is not black and white. Is this material? Is this substantial? This is 5'. This is a foot in letters. We could start talking out percentages, but the bottom line, in the applicant's mind, it is a substantial change from 43' to the 38'6".

RUANE: If anyone would have any questions of Christian now would be the

time that I would suggest that you ask.

FOSTER: Christian had mentioned new plans or new facts. Are there any new facts in the presentation of the sign other than the size that you mentioned that are different in any of the plans or the rationale and so forth for it?

ABLAH: Yes, I think in the study if we get into the case itself, if you allow that, we can get into that with detail as far as when we talked last time. I think there were questions about the visibility and where that is from. There has been a new sight line study that is provided for you that specifically looks at about eight different angles from Rock Road and the visibility and that height difference between 38' and 43'. I think if we can get into that, and again I would welcome that, and we are all here and I would sure like the opportunity at least to at least have heard and be heard in that. A lot of time and effort has gone into this. I have worked very hard, and in the event that you chose not to hear the case, which I hope that is not the case.

I just might as well mention this. I did take this, and the first thing that I did was talk to the Commissioner for this District, City Council Member Joe Pisciotte. I did take this to the DAB about three weeks ago.

RUANE: Was that after we had ruled on it?

ABLAH: Yes. That is what I did after it was ruled. I went and saw Mr. Pisciotte, and then I talked with Marvin. I spoke with both Dale and Scott, and we took this to DAB and it did pass. I understand that the governing body that has the authority is the one that is here today, the BZA.

FOSTER: May I interrupt?

ABLAH: Sure.

FOSTER: I am not sure we should hear what the DAB did. As you recall...

RUANE: I am going to allow that interruption, because, and I will defer to you Doug Moshier, could anything that happened, I mean could this DAB meeting that happened after the last time we heard this be relevant on the topic of what is different now? If it was the same proposal?

MOSHIER: No, not only that but, I don't think anything from the DAB can be relevant to this Board's deliberations.

ABLAH: Clearly understood, Gentlemen. I just want it to be known that it is not that we didn't do anything, and that there was nothing that we did. We try to

understand how different Boards work in our organization and in our City to try and get something passed or try to get something. I understand that there was nothing there, but I just wanted to make to note that we haven't been just not doing anything.

FOSTER: May I ask, did the DAB tell you that they had no jurisdiction over the BZA Board?

ABLAH: Absolutely. I clearly understood that the entire time and went through the effort to meet with each and every one of the DAB members that was willing to meet. I also did do that. I also, in case I am not able, and I hope that I get the opportunity to speak to you on this matter, also to let you know when I talked with Mr. Ruane, he made it clear that he thought discussion and the opportunity to discuss this is at this meeting here today if you all chose to do so. I understand the process.

FOSTER: Who said that did you say?

ABLAH: James Ruane to your right.

FOSTER: I don't understand.

ABLAH: Previously, I believe I talked to you on the telephone maybe about August 25th or so or maybe a few days before the August 28th meeting. I think you specifically shared some concerns, if I remember correctly, shared some concerns that you did not particularly like to talk about these things except at these meetings.

FOSTER: I don't talk about them outside of this room.

ABLAH: That is what my point is. This time, this go around, I made no phone calls to anybody on the BZA Board.

FOSTER: I was just talking about the DAB. In other words, you talked to all the DAB members also?

ABLAH: I made an effort to talk to each one. I talked to about 6 out of the 11.

FOSTER: None of them told you that they had no jurisdiction over this?

ABLAH: Everyone understood that. I told them, and I clearly understood that sir.

FOSTER: But you talked to them anyway.

RUANE: Let's stick to the relevance, any other questions for Christian? Because Scott or somebody from staff is going to comment on this aspect of the matter as well as I understand. Is that correct?

MILLER: In terms of staff's opinion on whether you should hear it?

RUANE: Yes, with regard, should this matter be reheard?

SKELTON: If my understanding is correct, last time I think Mr. Miller wrote or read out of the regulations what constituted a roof sign. I think on his prior application, I think it amounted to that it was a roof sign by definition. Now, my question is, is this revised plan, can it be considered a roof sign? If not, I don't think we have our justification to hear this case.

PITTS: I agree with Mr. Skelton's comments.

KNEBEL: Actually, the point that I think that we made in the comments the last time was that it had the visual appearance of a roof sign. However, and it does if you read on its face the definition of a roof sign, it does appear to meet that description. However, technically, and maybe J.R. can answer this a little better than I can, anything that is attached as a parapet wall is considered a wall sign even though it may extend above the top line of the wall. The sign itself may be the only thing that extends above the top line of the wall, as long as it is at the face of the wall and structurally a part of the wall, then it is considered a wall sign.

SKELTON: He read some regulation or definitions regarding what constitutes a roof sign, and I don't think that applies here to this revised drawing, and I can't remember it verbatim what Dale said.

RUANE: Please respect me as just trying to be a good Chair. But, here is the way the Chair is going to insist that this is handled. Rose, look at and everybody look at the Department of Law Interoffice Memorandum that we got from Sharon.

The third paragraph says, "Prior to determining if the current Variance request should be granted, the Board according to its bylaws, must determine if there has been a sufficient change in conditions or circumstances which materially alter the aspects of the case to warrant the Board rehearing the Variance request."

That is the stage that we are at right now, where Christian is being provided an opportunity to speak and to answer questions and I am having a hard time seeing whether or not the sub-issue of roof sign or not relates to or is germane to that issue.

PITTS: Mr. Chairman, if we are discussing this yet, I should think that would be. If we can determine while we are hearing the circumstances surrounding this that reducing the height of this sign from the requested 43' to 38'6" would not only constitute it a roof sign but the appearance of a roof sign, which is one of the things that our decision was based on denying this was the appearance of being a roof sign.

RUANE: So the reduction in height would make it more of a roof sign?

PITTS: If it should make it less of a roof sign, then I should think that this would be a significant change.

RUANE: I think we are going to hear from staff on that particular point, are we not?

MILLER: I guess the point that I was trying to make, last time there was discussion about whether it was a roof sign or whether it wasn't. We read the definition so that everyone understood what a roof sign is by the current code. Then there was discussion on whether this had the appearance in terms of maintaining the spirit and intent of the sign code and complying with the spirit and intent of the rules and regulations. That was the discussion in my mind whether it was a roof sign or not a roof sign.

RUANE: Wasn't the conclusion of that discussion that even if we decided it was a roof sign and we wanted to do it there was no way that we could accommodate it via a Variance under the code?

MILLER: Because roof signs are not permitted. But this is not a roof sign by definition, but that was the discussion last time, was it or isn't it a roof sign.

RUANE: Right, I guess at risk of being more blunt, I don't see the point of discussing that any further because we cannot give them a Variance to erect a roof sign on top of this building. So why should we try?

ABLAH: This is not a roof sign. It is clearly not a roof sign, and then you get into the definition and the argument back and forth.

RUANE: Any other questions for Christian at this juncture? Okay, let's hear from Scott, again, this is on the issue of has there been a sufficient change? Or hear from staff has there been a sufficient change in conditions or circumstances that materially alters the aspects of the case toward the Board rehearing it?

KNEBEL: As the memo states, the first issue that the Board needs to decide, and

really, we are going to leave it up to the Board to decide whether or not there is that. But we do welcome the opportunity to provide you our opinion to whether or not it does. Essentially the request is still a variance to increase the height of a sign. Now, does that meet the definition of being a sufficient change? We don't really see that it does. Essentially the applicant is asking for a Variance to build the exact same sign that they were going to build. It just has different dimensions than what it did before. You could have previously, when the Variance for a 43 foot sign was requested, you could have granted a Variance for 38'6" had the applicant asked for that or made that concession at the last hearing and you had agreed to it. So to that extent we don't feel that this is any significant alteration other than the fact that the applicant is making another attempt to get approval of the sign.

RUANE: What questions does the Board have for Scott, staff, or legal staff?

KNEBEL: The only other point that I would have to add is that if 38'6" is significantly different than 43', then you deny 38'6" then the applicant may come back with 33' and is that significantly different than 38'6" and so on and so on and you can see where that would lead for future cases.

FOSTER: Scott, this is on the same building and has the same wording as before correct?

KNEBEL: That is correct.

FOSTER: Other than reducing the height by 4'6" and if the letters are reduced by 1-foot right?

KNEBEL: That is correct.

FOSTER: Does that lower the letters or do you know that?

KNEBEL: As far as...

FOSTER: Does that lower them in any way and make the sign look any different?

KNEBEL: I, and it is just a matter of my opinion, but I don't have the two here in front of me, but if you compare the two sign drawings that were submitted with the two separate applications, if there were no scale on either one of them telling you the letters and the sign height were smaller, it would be very difficult if not impossible to tell the difference between which one was which.

RUANE: Scott, do you have any slides that you would like to show us?

KNEBEL: I can show you slides, I think most of them deal with whether or not the Variance should be granted.

RUANE: Christian, I did not afford you the same opportunity, but I will. It was my mistake.

KNEBEL: I do not have any slides that deal with whether or not this is of significant change or not.

RUANE: Any other questions for Scott? Christian, if you have a slide that you would like to show, now would be when I request you to do so.

ABLAH: I don't have a slide, but I want to be careful too and to not try and go through the application. But again, I know that this Board hears a lot of cases, and I know that there are a lot of things that are important, we could argue about or discuss.

RUANE: If we decide to hear it then you will have an opportunity to present it on merits.

ABLAH: I have a wonderful presentation and would really like the opportunity for this 125 store chain from Pennsylvania, privately held, that would like to talk about entering into this market. I would very much like the opportunity to do that.

RUANE: Let's go back and get that because if we are both talking I am sure that there is no way that Rose can get that in the minutes. Rose did you get that.

SIMMERING: Yes, it is fine.

RUANE: Christian, go ahead.

ABLAH: I would just like the opportunity to be heard, and it is funny that I have been through different zoning cases and this is a BZA and this a little bit different. But again, I reiterate that when one talks to staff and tries to work with them 1', 2', 3', 4', 4 ½', those are substantial things in the eyes of the City when one is trying to get that. So we have reduced that and made the concession on the lettered sign. But I would like the opportunity to at least be heard and at least have that opportunity and without going into great detail I just sure hope we get that chance.

RUANE: So, we have to decide before we go further has there been a significant change in conditions or circumstances to warrant rehearing it? That is the

question, is there a motion?

BICKLEY: Discussion?

SKELTON: Mr. Chairman...

RUANE: However you would like to proceed.

SKELTON: If my memory serves me correctly, the big issue was that the appearance of the sign on its first request, the bottom of the sign was directly adjacent to the top of the roof; the whole sign appeared to be on top of the roof. Now, the way that it appears, the bottom of the sign is indeed below the roofline. I think the argument of a roof sign would not find its way into this argument this current application so easily. Therefore, it is my opinion that we should hear this case. I also do agree that any change in height, or size, or letters, or the size of the sign, it is a whole new application, and I think he should have the right to be heard.

RUANE: Any other discussion?

FOSTER: I think we have to look to the future. Does that mean that people can come back if they lower the sign 1', 2', 3', or move it over a ½' whatever? The wording is the same; the location is the same. Basically, I think it sets a very poor principal.

Now, I don't see the same audience that we had before. We had a gentleman here the last time, a businessmen that took time off from his work, came down, the gentleman from the movie theater. If you recall people were notified in the area. It just happens that there weren't very many people. There is nobody here today, but all of these people are notified within 200 feet of this site, and this one just doesn't happen to have that.

The point is that if anybody can come back and just want to change instead of a 3' side yard, they want a 10' side yard are we going to hear it again?

RUANE: We have not yet given some members of the audience the opportunity to speak. Are you here to address this issue?

MOSHIER: You probably ought to open it up.

AUDIENCE: Yes.

RUANE: So, if we are going to hear the case, they will have their opportunity.

FOSTER: They are not on this part of the case then, I guess.

RUANE: We need to decide if we are going to hear the case before it is really appropriate to let them speak.

SKELTON: I don't think that we can whitewash all zoning cases into this example. Each one has to be evaluated independently. We can say, "yes, well if a guy is going to come back, again, and again, and again, that sets a poor precedent", that is fine. However each case is unique to itself. A sign Variance is different from a yard setback. Clearly I think this gentleman has paid the fee, and he believes strongly in his argument, and he is here to be heard. I think we should hear this case. I feel strongly that we should hear this case.

FOSTER: Mr. Chairman that is not the issue to hear the case.

SKELTON: Yes it is.

RUANE: I understand. What is the issue?

FOSTER: The issue is not whether to hear the case. The question is as, our attorney has given us the information showing changed conditions or circumstances, which in the opinion of the Board materially alter the aspects of the case. That is the issue not whether he paid a fee. Anybody can pay the fee.

SKELTON: Material facts, in my opinion, I think the appearance of a roof sign is significantly diminished here. I don't think that you could bring the argument of a roof sign into this particular Variance the same way as you did last time. Materially speaking, the sign is smaller. The letters are smaller. The sign is shorter.

RUANE: What other discussion of new information or new points of view with regard to this motion would any of you have? Otherwise we should call the question.

FOSTER: There has been no motion Mr. Chairman.

RUANE: There was a motion made by Mr. Skelton.

SKELTON: I don't think I made a motion.

FOSTER: I didn't hear a motion.

RUANE: Mr. Skelton, you spoke in favor of rehearing this case.

SKELTON: I am in favor of hearing this case, and I will vote in favor of a motion to hear this case.

RUANE: The Chair requests a motion from Mr. Skelton, against if you would like or for if you would like.

SKELTON moves that we would hear the said case.

RUANE: Because...

SKELTON moves TIDEMANN seconds, that we rehear the said case because of the material facts dictate as in the argument of a roof sign is irrelevant here the sign is shorter and sign has smaller letters.

FOSTER: Mr. Chairman, I am going to vote against this because I don't think that we have all of the facts. How does the motion maker know that the letters are smaller? Nothing has been presented to us on that basis.

SKELTON: We just heard it from the applicant.

RUANE: You know what? I did not wear this striped shirt because I need a whistle for this meeting. Please let each other finish your comments.

SKELTON: I apologize Mr. Chairman.

FOSTER: I think it sets a very poor precedent.

RUANE: No. My point was that you need to be allowed to finish your comments without anyone interrupting you.

FOSTER: He is basing his point about that this is less of a roof sign. How much lower is it as a roof sign? We don't know.

RUANE: All discussed now. I was fully prepared to vote against each and every aspect of this because I think this is a terrible waste of our time. I felt so sorry for Christian to have had to put together what was I think the lamest Variance application I have ever seen before us a month ago. But he had a job that he had to do, and he has the guts to come back none the less.

So we have had to spend this much time on it already. It is already 10 minutes after 2 p.m. The efforts to be efficient have failed. So I will yield. I will hear the case, but beware that the Chair expects this to move along quickly. So I will vote in favor of the motion.

PITTS: Was there a formal motion Chair?

RUANE: Yes, there is already a motion. That was just a comment in favor of the motion. We have Mr. Skelton's motion which was seconded by Mr. Tidemann. Unless there is further discussion, we should vote on that motion. We will call the question.

SKELTON moves TIDEMANN seconds, that we rehear the said case because of the material facts dictate as in the argument of a roof sign is irrelevant here the sign is shorter and sign has smaller letters.

Motion carries to rehear the case 42-1. TIDEMANN, PITTS, SKELTON, RUANE approve to rehear the case. ROGERS, and FOSTER deny rehearing the case. PHILLIPS abstention.

RUANE: The clock is ticking who goes first? Scott, not a pause...

KNEBEL: This particular Variance request I think most of you are pretty familiar with since we have heard a similar one previously. The property is located at 32nd Street North and Rock Road. The property is zoned Limited Commercial and is within the Mediterranean Plaza Commercial Community Unit Plan. That particular CUP states that signage is permitted in accordance with the Sign Code. The Sign Code limits wall signs to 30' in height, and the applicant has requested a variance for a wall sign that 38'6" in height.

The property, as you can see, is currently developed with a theater. The proposal is to demolish the existing theater and replace it with a retail center that includes the Dick's Sporting Goods. This is a drawing...

RUANE: Scott, let me interrupt you for just a moment. Were all of us here last time this matter was considered? Continue with this level of detail then.

KNEBEL: This is a drawing that was submitted with the application, and I have also seen other drawings that were submitted to Board members but not submitted to staff that show the Dick's Sporting Goods in the middle of the retail center rather than on the southern end. I guess the applicant can clarify exactly where the sporting goods store is proposed to be. But they have submitted other materials that indicate that actually the store would be in this location with retail north and south of it rather than in this location with other retail exclusively north of it. But this is presented to the Board because that was the site plan that was submitted with the application.

This is the elevation drawing of the sign. You can see that there appears to be another retail business on the south here with its own signage and that is what

leads me to believe that perhaps the site plan that was submitted is not the accurate one. This shows, as you can see, Dick's Sporting Goods with the majority of the sign in fact all of the 8' letters above the remainder of the wall basically functioning as a very large billboard type sign above the wall of the shopping center itself.

This is the site. As I mentioned, it is developed with a theater looking at it to the east. This is the neighboring development. To the south and to the east, a theater and a bowling alley.

RUANE: Scott, can you go back two slides. Is there anything in City Ordinance that prevents the maintenance or pruning of landscape required in parking?

KNEBEL: That prevents it?

RUANE: That prevents it. Like, if for visibility towards that front door was wished to be improved, could you trim those trees and still be in keeping with the landscaping ordinance?

KNEBEL: Yes, you could trim the trees. The bowling alley and the theater to the south, and to the north and northeast is additional retail and office type uses, and to the north again are office uses, and then to the west and north are restaurant and retail uses across the street. To the northwest are gas stations and some other restaurant and retail uses as well as to the west, and to the southwest is restaurant and retail.

This is the sign that is out on the Rock Road frontage that the applicant has indicated that they will be using a portion of to indicate their location. This is the permitted ground mounted signage, which is referred to in the staff report. These are some pictures. At the last hearing the applicant indicated that they were attempting to have visibility from Rock Road and there was some mention of a 1/2 mile distance. I think they later retracted that statement but this is a picture looking down K-96 towards the exit of Rock Road. The proposed Dick's Sporting Goods would be located behind these apartment buildings and would not be visible from this location.

RUANE: So whether 8' tall or 9' tall Dick's is not visible from K-96?

KNEBEL: Not from that particular location, at this location which is a zoom out view from the...

RUANE: What kind of angle?

KNEBEL: Wide-angle, zoomed out to the maximum that the camera will do.

From the Rock Road exit the Dick's Sporting Goods would be located approximately in this location here. It is not very clear on these pictures. But I think there is a handout that the applicant has given to you that points to the fact that at 30' you can see the sign at least a portion of it from this particular location. As you take it at a normal view, what you would see if you were standing there with a naked eye this is the top of the theater now, which is 30' high. Were they to put a 30' high sign on that you would be able to see it, I think it is pretty clear, from the Rock Road exit.

Then as you zoom in it is even a little a bit more clear as to just how much above the intermediate buildings that theater building, which is 30' tall, how much taller it is than the buildings in front of it. Also to show some of the gaps that are between the out buildings along Rock Road. This is the gap between the barbeque restaurant and the strip center that is to the south of it, which is all located north of 32nd Street from the subject property. This is the gap at the 32nd Street intersection where you can see the entire building that exist today including their signage which is mounted at approximately no higher than 20 feet. This is again the gap at the entrance to the building where you would be able to see the building once again if you drove along Rock Road and this is north of the ...

TAPE CHANGE

But there is one other gap where you would be able to see a building located at this site. This is the materials that the applicant submitted. They are reproductions. I am not exactly sure how they prepared them. You have copies of these pictures in your packet.

RUANE: Let's wrap it up.

KNEBEL: Okay, do you not want me to discuss this?

RUANE: Let's bring it to a close.

FOSTER: It is all new information.

KNEBEL: These pictures show in this location here a 30' sign that says Dick's. It is not very clear in any of the material, but you can sort of see it there. These don't reproduce very well on slides, but you have them in your packet. In this particular location is a 30' tall sign that says Dick's, which you can see from Rock Road. In this picture some of the trees and DQ block it. In this picture again it is clear as you look to the east and then here it is blocked by the DQ partially. Here it is clear as you look between the DQ and the strip center that is located to the south of it, and then the strip center as you look directly onto it blocks the sign in the next several pictures.

This particular diagram here indicates the height in which the sign would need to be mounted were it to be visible over the out parcels. The base of the sign would need to be over 70 feet high in order to see the sign at all.

RUANE: Over 70 feet high?

KNEBEL: Yes, over 70 feet high at the base.

RUANE: And this application is for....

KNEBEL: Is for 38'6" that is correct. I can go into as much detail as you want on the staff report here.

RUANE: Would it be new information because as we thought about it we were all here last time this matter was discussed. Randy Phillips was not here but since he is abstaining there is no reason to have a remedial group approach us.

KNEBEL: Okay, it is up to you. I assume you have all read the report.

RUANE: How do the rest of you feel?

KNEBEL: There is additional information that was provided by the applicant and....

RUANE: I am sure the applicant will be quick to point out additional information.

KNEBEL: Sure, and it is referenced in the staff report and is responded to as well in there.

FOSTER: Scott, on the drawing that you have there, in other words, are you saying that motorist passing on Rock Road would be unable to see the sign whether it is 38 ½' or 43' wherever any of these buildings are. In other words the only place that you would see it would be an opening in between.

KNEBEL: That is right.

FOSTER: The only height to satisfy this would be 73'?

KNEBEL: That's right. The only place you would be able to see it would be at the gaps, and it is way back there. But as I showed previously the NorthRock VI theater has signage about 20' which is even visible in those gaps at that height.

RUANE: Thank you Scott. Christian you are up again.

ABLAH: Thanks, and thanks for the opportunity to be heard again. Scott, did you have some of the other information that I had sent on the slides that we had sent you, as far as it showing the 38'?

KNEBEL: This is all I received. All the slides that you gave me showed 30'.

ABLAH: You didn't receive the 38'?

KNEBEL: All the ones that you gave me had said 30'. I guess there is one slide here that says 38' you might pass that around, I think that is the only one that you provided. The rest of them showed 30'.

ABLAH: Are you sure?

KNEBEL: Yes.

RUANE: Just as a point of order. What are you guys talking about?

KNEBEL: That particular picture that he is passing around to you.

ABLAH: I feel I provided more information.

RUANE: It is the difference between 30' and 38' feet is what this picture shows us?

ABLAH: There was about six others that should have been presented maybe they weren't but I think that were hand delivered.

KNEBEL: There were additional pictures that you provided but they all said 30' on them.

ABLAH: The 70' or 73' that is just something I wanted to point out, that is something that staff...

RUANE: Keep it going don't let them distract you.

ABLAH: I am sorry I appreciate that. The 70' or 73' that is something that staff had put together that was not something we put together.

RUANE: I understand. Just make your presentation.

ABLAH: How much time do I have, is there a limited time? Because if I know

what I have to work with I would be happy to cooperate. Three or four minutes maybe?

RUANE: Five minutes per bylaws.

SKELTON: Is that right, isn't ten minutes, Dale?

RUANE: I let staff run over, so if you need to I will let you run over as well.

MILLER: Applicant's usually get 10 minutes. He has that much time left unless you want me to start it over due to the confusion.

ABLAH: I am fine with that unless something runs over.

RUANE: Let's start with that.

ABLAH: Happy to do so. You know when we talked and when I visited with staff one of the things they said they really wanted me to look at and you know I tried as hard as I could to get their support unfortunately we were not able to. I think maybe I challenged them a little bit, but obviously we didn't get to where we wanted to go. But, what they wanted me to do was to really take a hard look at the five conditions of uniqueness, etc...

So as far as uniqueness if you look in the handout that I provided on Letter (A) This is a single use or special purpose building. Currently this is obviously a 6 screen theater which would be replaced by a more of a traditional type use. The change in use would be more of a "walk up retail" as opposed to a "destination point."

This is a new market that Dicks Sporting Goods again, that I would like to repeat, about 125 store chain that want to enter into this market. The brand name and I am sorry that there is not more than I think what Mr. Foster has in front of him now. The difference between 38' and 30' is tremendous in the eyes of the tenant. From different angles from what George Lay and ICON signs put together showed that, and it is not in here as it should be.

KNEBEL: Just for your information, I did pass around everything else that you gave me and the Board members if you can tell me it does, all except for the one, does say 30' at the bottom. Is that not accurate?

RUANE: Yes. So do we believe that the 30' at the bottom is a mistake and it is really 38' or what?

KNEBEL: I don't know.

ABLAH: There was suppose to be a comparison between 30' and 38' is what they were supposed to have.

RUANE: They are not, but we have to go based upon the record submitted today.

ABLAH: Understood. The letter "B" as far as whether this is to adjacent property owners. I did have one call of somebody who objected but I will tell you that from talking with staff and talking with the neighbors from Wal-Mart Supercenter, Petco, Hollywood Video, Barnes & Noble that whole area, the synergy of what a retailer like Dick's Sporting Goods brings to this area, if it effects adjacent property owners, it would not. I think it would be positive even for similar type of sporting goods. There is that, I think you mention Jim you have a child, you would like to see this. You would like to be able to go and have options. I don't want to try and put words in your mouth, but I think you made a comment about how one would like to have choices so as far as adjacent property owners. I don't think there is anything toward where it negatively affects them I think. It is more of a positive role.

I am just going to read a little bit about what we had on letter "C". Through extensive efforts to market and develop its brand name, Dicks Sporting Goods has become a successful, privately held, 125 store chain based in Pennsylvania. The increased height request is imperative to operate a successful business. Dicks has recently opened 5 stores in Kansas City and one in Topeka. In Topeka, the signage height on the building is 43'.

Again, I think I will just kind of touch back on that as far as what they bring and what they typically like. The like to have their pro-typical size, height, and they like to develop their brand name when they are in a market. Again, I would like to talk about the concession where they do plan on the letters being smaller.

I also wanted to point this out and show you and I hope it is not a "lame" or makes it more of a "lame" presentation. I think it is obviously extremely simple.

RUANE: My foot is still in my mouth.

ABLAH: Well I think it is a very simple thing we are talking about height. What is the height of this ceiling? Can everybody give me an answer right now what it is? That is just an rhetorical statement. My point is that I would like to have some healthy discussion at the appropriate time just quickly when we are talking about roofline and that type of thing. All we are talking about is that this is the building height. This is the sign. This is the letters of the sign, and what we are talking about is simply the height that this is on the building. This is the building.

This is the sign height. Where does this lie? What we are talking about now is this being down a little bit and this going into the appropriate height that we have talked about.

I would like to have just some healthy discussion with all of you all about it, and I can just tell you after the September 11th attacks and in between when we first started this and now. I think it was August 28th when we did the first BZA case that was denied. They came back and said we are not doing any stores so send a letter to the landlord. We are not going to do anything. They came back and said that was just kind of a hold off. They are going to do 12 stores for this year and that is it. They have 125 in the country, and they want to come to Wichita and they want to look at the eastside. They want to do stores in this market, east and west, but they want to pin down the eastside.

One of the questions that Marvin had, and I might like him to discuss this, was when I was talking to him and trying to get his support and was not able to do so I asked about, he asked me the question about whether Dick's was going to go out to the west if there was a denial for them going out to Slawson's development at 21st and Maize if that had anything to do with height? He had a call into the landlord out there. So I think that perhaps, and again I am not putting words into Marvin's mouth by any chance and I am not alluding too, but perhaps there was at least a thought process of is this something that we would like to see in this community? I would like to remind you.

RUANE: Let's address that? Is there going to be a Dick's store in NewMarket Square?

ABLAH: No. They want to do the east location first, and then they will do the west location. They want to enter this market with two stores.

RUANE: Do they understand what their sign limitations would be at that location west?

ABLAH: Yes they do.

RUANE: And they would still be willing to do that store?

ABLAH: They turned that site down, so signage never came up on that site. We have not been able to focus on a west side site until this happens. That is right where they are at.

I remind you and remind you all that as citizens of this city and when I went to the DAB and when I went to Pisciotte, and when I went to people all that I am trying to do is get something passed that I believe in that is simply something that I

never thought would come to a second meeting or getting into all of these different things. We are talking about something that is very significant to that retailer in penetrating the market, and until they can penetrate the market the way they want to, that is the way they are going to be.

I am going to be with them tomorrow in Chicago at a convention, and I don't know what steps they are going to take. I have had different members of staff say, probably if they don't get this they are still going to come back and do this deal anyway. If they don't get the height, they are still going to do the deal. I think you made the comment Jim "I want to be able to shop at Dick's". My point to you is if you want to talk to Dick's, and I am sorry for the lame presentation and I am sorry for the mistake and I mean it we don't have slides that show the height difference. All we are talking about is height. What is the huge deal when the building can be 45 feet anyway. We want this to be a 38' high sign. Everybody can argue under the sun and tell what that means. I can tell you that from the retailer's perspective it is imperative that they get what they want from what they have lead us to believe. I would be happy to have more discussion with the Board.

RUANE: Let me say something right here. I did use the word "lame". You have my apology. My observation is that 2 months from now when you were here the Dick's people were not here. You did have your engineering consultants here trying to support you and helping you and you did a valued job. You have done a zealous job here today all on your own with visual aides that are not prepared to represent what you thought they would prepare for you, and "lame" has nothing to do with your abilities or your commitment to the job. It is just my personal feelings that we have spent as many hours as we have already spent and staff has spent as many hours as they have already spent over the difference between an 8' tall "D" and a 9' tall "D".

ABLAH: I think that is the whole point. To the tenant it is extremely important, especially when coming into a market to get that brand name. That is all they talk about. Their apologies are they're not to be here, and I encourage and I knew that had come up before.

RUANE: So "lame" communicate to Dick's and communicate to Austin Miller but don't take it personally.

ABLAH: I am thick skinned and I could care less. I am just giving you a hard time at the same time.

RUANE: I deserve it. We have some members from the audience that wish to speak?

FOSTER: I have a question for Mr. Ablah.

RUANE: Yes, if you have a question, you may ask it now.

FOSTER: Mr. Ablah, If a person is viewing this sign between buildings on Rock Road, what difference does it make between 30' and 38'?

ABLAH: That is a great question. I wish I had the other drawings that illustrated that, because I promise you we are not all doing this to waste everyone's time, if it appears that way. We are doing this because it is something that is adamantly important to the tenant and there is a difference sir, between not at all points but at different angles, where at some points 38' is a big difference as far as the visibility goes compared to 30'. I would argue that I am sure that at some point that 73' is the drawing indicated that may be correct at that particular point, but there are other points along there probably about 8 of the 38' where they were more visible at that point then at the 30 feet. Does that answer your question?

RUANE: Any other question for Mr. Ablah? Does that answer your question?

ABLAH: If that answers your question sir, I encourage you not to just say no just because you want to say no.

FOSTER: All I am saying, what is the difference between 30' and 38' when you are looking through 2 stores looking down a corridor to look at this? Are we talking trees being in the way?

RUANE: As a quasi-judicial body if you know and have the answer to that question you may offer it yourself Bickley.

FOSTER: I don't know the answer. I am just trying to see what his point is. Are you coming back because people can't see it at 30' between two buildings?

ABLAH: That is part of the reason. Yes, at certain points they cannot be seen at 30'. The other thing that I didn't mention that was touched upon, that Scott touched upon, the existing theater sign that is there now has a Northrock 14 and Northrock 6, and the Northrock 14, as we stated before, would stay right where it is. The Northrock 6 a portion of that sign would be shared by Dick's Sporting Goods and some others, so their signage on the monument sign has also reduced quite a bit.

RUANE: That came through on some of the materials. I don't know which one.

FOSTER: Thank you.

RUANE: The Spanish inquisition is now over. You need to come up introduce yourself. Give your address for the record.

TIM GRUBE, GOLF DISCOUNT, 3300 N. Rock Road, Wichita, KS: Our main objection to this sign is that it is bigger than the law allows. We think it also, from certain views, would detract from our sign, and if they are allowed to put up a sign bigger than what is allowed by law then we would come back and address the fact that we would be allowed to put up a bigger sign as well.

Also, speaking with Mr. Ablah, he had the understanding that everybody, all the other retailers and so on and so forth around there were in or behind this, and we certainly were not just simply because of the sign issue. So that too kind of bothers us a little bit that he was under the understanding that we are behind it, and we certainly are not just simply because it is bigger then the law allows, and if we are going to comply with our sign being within what the law regulates, why should they not?

RUANE: Questions? Do we have anyone else for comment? We will bring it up for discussion here on the bench. I would rather not begin this discussion.

FOSTER: Mr. Chairman, I would first like to apologize to Mr. Skelton. The material presented in my opinion does not show that the letters would be smaller, but by comparing what they gave us the last time and this time the letters are smaller. We would not know it from what material he had given us today. It merely spoke of the height of the letter, not the size of the letters.

SKELTON: That is fine Bickley. I thought I heard Christian state that.

FOSTER: Mr. Chairman, I think that the staff has done even a better job in terms of presenting their arguments about this. A study by the City in terms of the intensity of operation of Rock Road, this is getting to be a problem the cost of that road improvements and so forth, is tremendous, and now we are talking about we need more and more retailer on this site.

Secondly, I would say that you could see this sign from 30' or 38' or 43'. You can see it at 30' between these buildings. I went out and looked at it, and I suppose you might have a few tree lines, but you can still see that there is a sign there and an idea that Dick's is there. I don't think that the idea that we need to have signs that we see from the interstate. I think even last time they determined that they did not need a sign from the interstate road itself except they wanted on the off ramp. I have been on that ramp many, many times, and you are lucky to get off that ramp and glad to do it. The idea of looking around for signs, I don't think people would do that very much there. I have been there many times for eating on that side of town.

I think the point that it sets a very bad precedent that people can go out, and that is what bothers me the most, is that people can go out buy a building or rent a building whatever the case may be here and put up signs that make-up the difference between buying an area to the back or the front. I think when you buy it to the back, Wal-Mart didn't go out front the others did. Wal-Mart is the largest retailer in the world and they don't mind being back there with a sign that is less than 30'.

I don't see any need to do this Mr. Chairman. I don't see anything new, and in fact, I think that the point of the staff that the 73' illustration is a very good thing to show that no matter how high they went you could never see it. That was one of the arguments last time that at 43', my impression was that they were talking about seeing it, so 43' wouldn't even see it from Rock Road. I see no advantage to the public and public policy by doing that.

RUANE: Are you comfortable in putting that in a motion?

FOSTER: I don't know that we have it in front of us here. I don't have the standard forms. Is it in the book here?

SIMMERING: Yes, in the back of the book in front of you.

FOSTER moves ROGERS seconds, that the Board accept the findings of fact as set forth in the Secretary's Report and that five conditions set out in the section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found not to exist and that the BZA2001-00050 variance be denied.

RUANE: Discussion or has all of the discussion already taken place?

SKELTON: Discussion of the motion? I have none on this motion.

RUANE: Discussion of this motion is all that is appropriate at this time. Call the question. All in favor of Bickley's motion to deny the applicant request please indicate by voting.

VOTE 3- 3 (1).

Motion fails, vote 3 to approve denying request, ROGERS, FOSTER, RUANE. Vote 3 against motion to deny the case SKELTON, PITTS, TIDEMANN.

RUANE: The beat goes on. I am not sure exactly what happens from here.

FOSTER: The vote fails now. You have to have 4 votes to pass.

MILLER: You have to have 4 affirmative votes to take an action.

RUANE: Thank you for your patience.

ABLAH: So what does that mean then?

KNEBEL: No variance granted.

ABLAH: It is dead right?

RUANE: It is dead, but your efforts were valiant, and please have anybody who you want call me and I will vouch for that. The next item is #3 Case number BZA2001-00051 Variance to allow reduction of the side yard setback from 6' to 3' for a garage workshop. The applicant is Donald R. Govan.

PITTS: I am not too sure we did the right thing on the last case.

MOSHIER: The gentlemen has already left, but I think to close the record have somebody from the winning side that was opposed to Bickley's motion make a motion to accept it and have that vote taken because there is not affirmative tie vote which fails.

MILLER: It takes 4 votes to accomplish an action.

MOSHIER: I know that. I think we are probably all correct, but that 3-3 vote but I don't think you can assume that I think you need to make...

RUANE: That makes perfect sense to me, but I thought I was advised otherwise. Tell me what to do, and I will do it.

MOSHIER: Somebody who voted in opposition to Bickely's motion I suggest maybe make the motion to grant the variance.

RUANE: And we vote that down.

MOSHIER: I don't know how that is going to go but if it goes 3-3 then what everybody said to Mr. Ablah is correct. It's failed, and he is done.

FOSTER: Mr. Chairman, I am not absolutely sure of this because I haven't been on for a year and half. My recollection is that you have to have 4 to pass this motion to do it and it is...

RUANE: But out of an abundance of caution I am deciding we are doing what Doug has asked, because it will take us less time to do it any other way.

MOSHIER: Let's assume that they would like to appeal something, what do they have to appeal? They have a moot vote on a denial. They don't have any action on their application.

RUANE: You do not need to persuade me.

MOSHIER: Somebody needs to make a motion.

RUANE: Tell someone that voted against what to do, and have them do it.

MOSHIER: Make a motion that they have met all five and that you move to grant the variance for 38'

SKELTON: So this would be a motion to approve the variance with the findings other than those stated in the secretary's report.

SKELTON moves, TIDEMANN seconds, that the Board accept the findings of fact as follows; and that all five conditions set out in section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to normal conditions set by the secretary.

1.) I will move that the property is unique because it is a single-use multi-purpose building and it will have a total change in use.

2.) The adjacent property will not be affected because other properties that are adjacent to Rock Road do not suffer the same setback off of the main right-of-way as this business does.

3.) Strict application of the provision of the zoning regulations may constitute unnecessary hardship because of the location and setback from Rock Road and other nearby streets.

4.) Granting of the variance will not adversely effect the public interest because providing this variance will give Dick's a greater incentive to locate at this area.

5.) Granting of the variance would not be opposed to the spirit and intent of the ordinance because it does not detract from the character of the this retailer area whatsoever.

MOTION TO ALLOW VARIANCE 3-3 (1), moot vote.

**Motion fails, vote 3 to deny allowing request, ROGERS, FOSTER, RUANE.
Vote 3 to approve allowing the request, SKELTON, PITTS, TIDEMANN.**

DONALD R. GOVAN, Property Owner and Applicant, 2101 N. Madison:
After reading and re-reading the Secretary's Report...

RUANE: You are going to have to speak more into the microphone, so we can all hear you.

GOVAN: Excuse me. I said after reading and re-reading the Secretary's Report I believe that there were some misunderstanding and inaccuracy and since this is all new to me maybe I didn't adequately express myself to him. To the best of my knowledge and ability, all of the proposed site plan, which you have in front of you, and the information are consistent and true. I am here now because of the importance of this to me.

After spending a great deal of effort and money to comply and correct an issue which I never knew existed before, he stated before that, I built. I did not build this. All I simply did in this was replace the rotted siding. When I bought this building, the home, and when I moved into it, I have been using the garage that was existing at that time. It had siding on it and it had windows in it. I was not aware of any problem about it. When I recently replaced the siding on it, no sooner then the very day after the siding was put on was when I was contacted by Central Inspection. At that time I became aware about the issues with the structure. I had no knowledge previously about this.

RUANE: Let me interrupt you with a question. Did you pay cash for your house or was there a loan involved?

GOVAN: I paid cash.

RUANE: So there was not any title inspection or survey or anything like that done prior to the acquisition of your house?

GOVAN: No sir, I personally paid for a survey when the fence was installed.

RUANE: That did not suggest to you any of the setback or other problems that we are talking to you here about today?

GOVAN: I was not made aware about anything like that.

RUANE: How did the survey show these improvements relative to the location of the property line?

GOVAN: The survey that I asked for was just for fencing. So basically I was informed that where the property line would be and that I should be at least about 3 inches my side of it or more. That was basically all of the information I was given in relation to the fencing.

RUANE: Is that lattice type work fence that is in the foreground of this slide the fence that you were talking about?

GOVAN: Yes sir. That and on the other side of the property.

RUANE: So you understand that fencing to be your property line per the survey?

GOVAN: Yes sir.

RUANE: Thank you very much. Continue on please.

GOVAN: In reference to the Secretary's Report about the background, I did not construct the north side addition. It was already there. I did not know of anything wrong with it. I purchased this property back in 1979. I moved into it, I believe mid-80. I have been using the structure there for a garage and for storage for some time. Again, like I mentioned, the siding on it had been rotted because of the age of it, and I replaced this. Then, once I was contacted by Central Inspection, I went down there on many, many occasions so I could comply with what they had made me aware of at that time. Central Inspection had referred me to this Department before they would issue a permit, because I tried to get a permit at that time.

It is not my desire to keep the structure as is but instead to reconstruct a finished legal building as proposed before you. Again it was suggested to me by Central Inspection not to do anything more until I was finished with this Variance request. The proposed site plan shows the actual intended finished structure as per Code as I understand it with the requested 3-foot setback only. The existing structure will not remain. As I indicated in the attachment this and other financial burdens have resulted in my phone being cut off and my deteriorating condition.

In reference to the adjacent property, I have visited with all of my neighbors and they know me well. I am very neighborly in my community. I visited with all of them and they visited with me. None of the affected adjacent residences on the north side or any of the surrounding homeowners has had any complaints or problems with what I have done to my knowledge. The people to the north is Mr. Sullivan and Mrs. Schooler. They have indicated with me that they like the

improvements that I have been making continually in the neighborhood.

I am willing, in what he mentions as the extra firewall requirements, I am willing to upgrade my property to whatever these requirements may be. My obvious physical handicap is registered hardship, and it necessitates minimizing the distances walked to and from any part of my structure with good ingress and egress. Once again, the finished structure will accommodate this handicap and hardship and will be accessible. A detached structure will add top great an additional distance and cost.

Judging from all of my surrounding neighbors and their comments and my experience, I am not aware of any adverse effect to the public intent of the regulations. What I have proposed before you, I believe and I pray, that the conditions are present to allow the requested Variance.

RUANE: Thank you very much Sir. Are there any questions for the applicant?

TIDEMANN: On the site plan showing the garage workshop, I think there is some confusion here. That was not built by yourself, the addition?

GOVAN: No sir. The only thing that I did to that was just replace the siding that was already rotted. I did not build it. It was already there.

TIDEMANN: That was there when you bought the property back in the 80's?

GOVAN: Yes, what you have before you, that is how it will be.

TIDEMANN: So you are going to remove that structure, that existing off-set structure, and build a new one per this? You are not going to do that, obviously, until you get the Variance of the 3-foot setback versus the 6-feet, correct?

GOVAN: That is correct. That is why I am here.

RUANE: So you are requesting to back it 3-feet away, back from the property line?

GOVAN: Yes sir. I am sorry if I did not explain that clearly before, but this is all new to me. I had no knowledge of any of this. I have never been through anything like this before.

PITTS: Mr. Govan, was that all enclosed in when you purchased the property?

GOVAN: When I purchased the property, it had windows and it had a door on the front. The door was also very rotted, and it was a custom door. It is not one

that you can just go buy anywhere.

PITTS: It had windows where?

GOVAN: It had windows all the way around it. It had windows in the door, in the front. It had windows on the side. It actually had more windows than present now. I actually reduced the window area.

RUANE: Maybe I am asking this question to staff. What am I missing here folks?

MILLER: Based on the new information?

RUANE: When you had to pull a building permit to put the siding on, did that convert it from a porch to an attached garage, or how did we get to where we are here?

MILLER: I don't know how we got from where the siding or whatever to here. But I guess I can say in an effort to try and save time for the Board is that based on this new information that we are getting, we can support the request as shown on the site plan. We can find that it is in compliance with the standards that you need to find in order to make it work, but a lot of this is new information to us. Two of us have talked to the applicant before, and apparently we are talking past each other about what the situation was, because neither Scott nor myself understood exactly what was going on until today.

RUANE: It sounds like something I can get behind, now that I understand that the staff report had some bad information that went in. In particular, the drawing at the end on the last page is hardly relevant to what the applicant really is seeking to do, right?

KNEBEL: No, I think the site plan is what the applicant wants to do. It is just not what is constructed.

RUANE: After these improvements are made, because he is going to shave 3-feet off of that building leaving a full 6-feet between he and his neighbor.

KNEBEL: Nine-feet, actually.

RUANE: Nine-feet and that is the reason why his neighbor is in favor of it. Therefore, I am in favor of it, and I make a motion to that effect.

FOSTER: Can we go through the procedures though? We have not closed the hearing yet.

RUANE: I am running out of patience if that is not clear.

FOSTER: I am glad to see that Mr. Govan is patience with us. I am sure that there has been a misunderstanding here, and I hope he understands that.

GOVAN: Yes sir, and I apologize.

FOSTER: Well, I think it just happened. I am just wondering, is there anything in this backyard other than the handicap that prevents putting a detached garage back there? Are there trees there? I see a tree there. Is that on your property or the neighbors property?

GOVAN: The trees are primarily on my neighbor's property, and they need trimming real bad. In years past, these trees have caused me roof damage, which is one of the reasons why I was reluctant to use the backyard. The backyard also has a grading problem. It is not severe, but from time to time with a hard rain there are water problems.

FOSTER: Is there a foundation? What kind of foundation is in this building already? Do you want to reuse it? Is that the idea here?

GOVAN: Yes sir. Actually this structure here is way over built according to the Code, and from all of the information that I have received, it is way overbuilt. It has a footing as well as a foundation, and it is on a slab as well.

FOSTER: I think you said the magic word for me, Mr. Govan, and I appreciate your patience in this, and it looks good to me Mr. Chairman.

PHILLIPS: What was the magic word Mr. Foster? Just out of curiosity.

FOSTER: Well, he has a foundation there, and so forth. He would have to remove a foundation to put it in the backyard.

PHILLIPS: And what assures you that foundation is there? Just speaking technically?

GOVAN: Your pictures show it Scott?

KNEBEL: I don't know that I would have any pictures that show it, no.

PHILLIPS: I just remember some of the discussion from the last case when things were presented and things were obviously contested. But, here we have a photograph, and you are accepting the fact that there is a foundation simply

because someone says that? Without knowing that for sure? I guess I am just wondering what convinced you so easily on that?

RUANE: Now, without splitting hairs.

PHILLIPS: I am not contesting that.

RUANE: But as an architect could a driveway constitute a foundation?

PHILLIPS: No.

FOSTER: No.

RUANE: No, wrong answer.

LAUGHTER

RUANE: Scratch that question and answer.

PHILLIPS: Believe me, my point is not to contest Mr. Govan, but to say that there is a foundation there wholly on the fact that we have already heard that he did not build this. He has no evidence that there is a foundation there looking at the photographs, and looking at the pictures it is hard for me to figure out what the word "overbuilt" means. I think what he is doing is the right approach, so I think it would be hard for me to say that there is a foundation or is not a foundation until someone went down there and actually dug a little bit down in the ground to see if it actually goes beyond 6 or 8 inches in the ground with some concrete there.

GOVAN: If I am respond?

PHILLIPS: Sure.

RUANE: Please.

GOVAN: The concrete is newer then the structure. It is not resting on the concrete itself. It has its own separate pylons and footing. The footing is 18 inches deep, and had I known, I would have brought pictures of that.

PHILLIPS: Well, I think the best bet for this case is for us to hear the merit of what the application is. Obviously those kind of issues will be dealt with by Central Inspection before a permit is issued, because, if you were going to provide a new structure there in compliance with the Variance request here, then there will be construction standards and Codes to be met. But 18 inches does not comply,

just for what it is worth. I don't want to argue the technical issues of the construction of that. I just want everybody aware of the fact that if there is a foundation there, we don't know and we can't say and we shouldn't accept that can be used one way or the other.

RUANE: That is a very good point. Thank you.

PITTS: At this juncture, I am not to sure what relevance it would be for us granting or denying the Variance, if whatever he does is going to do it per plans and get the approval of Central Inspection.

PHILLIPS: Exactly, that is my point. The technical aspects of it have nothing to do with the case, so I just didn't want somebody to take that as wrong information.

RUANE: Those are very good points. What is staff's input? What is the most efficient means to see that this goes forward because it does not sound to me as if it needs to come back to us, period, unless we somehow request it come back to us.

MILLER: Correct, if there is a motion on the floor, we can work on findings that would be consistent with your recommendation. If you were to recommend approval, our current findings are not for that, but we would have to work on those and present those to you or else do it here on the spot, whichever one you want to do. But we could work on those. Present those to you at the next meeting.

RUANE: What is your preference as to the most efficient means to proceed? Because I think that we have a motion that has not been seconded.

KNEBEL: I think the most efficient way would be for the Board to make findings of fact that support the approval.

PHILLIPS: I am willing to make the motion on that. Do we have a motion on the floor?

RUANE: We have a motion on the floor, which could die for the lack of a second or could be withdrawn.

FOSTER: I just said it looked good I did not make a motion.

PHILLIPS: I would be happy to make a motion.

RUANE: I thought I got the signal from Rose that we did have a motion.

SIMMERING: I thought Ruane made the motion but I did not get a second.

RUANE: So did I. I withdrew it. Now there is not a motion on the table, and we need findings of fact motion from the Board.

SKELTON: John has a question.

ROGERS: Mr. Govan, in your letter that you signed you addressed the issue of this being a garage?

GOVAN: Yes sir, the finished product, that is what it will be.

ROGERS: Do you feel like the 9-foot garage works as far as getting in and out of a vehicle?

GOVAN: I would prefer more, but the way that it exists and the way that I have been using it for the last 20 years, it was tough getting in and out without all the space provided.

ROGERS: That is my point.

GOVAN: So, yes, it will be difficult, but it will be manageable.

ROGERS: That would have a garage door there?

GOVAN: Yes.

SKELTON: Not according to the site plan.

RUANE: How do you get a car in there? How can you get an automobile in that structure now?

GOVAN: I can't right now, but when it is finished, it will have a door on it. What happened is, I left for a time when the workers were present, and they didn't have a door to put on it. I told them it had to be secure, so the face on there is just a temporary face just to keep it secure. The neighborhood I live in, I have been broken into several times, so I need it secured.

RUANE: So you want a garage door, frankly?

GOVAN: Yes sir.

PHILLIPS: As a point, a standard residential garage doors typically are 8 to 9

feet wide, a standard car stall according to city standards is 9 feet wide and you will find situations where they are allowed to go 8 ½ and even 8 feet wide, so his situation is very feasible. Obviously if he could have the 12 feet it would probably work better for his situation, but obviously Mr. Govan here is willing to comply.

RUANE: In terms of accommodating your disability, saving steps is what does you that best?

GOVAN: Yes sir.

RUANE: Are you following your Doctors orders?

GOVAN: I have had surgeries on my left knee, my left calf, my right thigh, my right heel, my back, and it is very painful for me just standing here right now.

RUANE: You are welcome to sit down if, you would like right now. You are welcome to take a chair if you would like. So we need a motion for findings of fact so that we can at a one stop deal with this fully.

PHILLIPS moves PITTS seconds THAT THE BOARD FIND THE FOLLOWING FACTS TO EXIST:

1. THE PROPERTY IS UNIQUE BECAUSE MR. GOVAN BOUGHT THE PROPERTY AND HE INHERITED THE PRE-EXISTING SITUATION THAT IS NOT COMPLIANT.
2. ADJACENT PROPERTY OWNERS RIGHTS WILL NOT BE ADVERSELY AFFECTED BECAUSE HE HAS DISCUSSED WITH THE ADJACENT PROPERTY OWNERS THE SITUATION AND THE MERITS OF THIS AND HE IS GOING TO IMPROVE THE EXISTING SEPERATION FROM 6 FEET TO 9 FEET.
3. STRICT APPLICATION OF THE PROVISIONS OF THE ZONING REGULATIONS WOULD CONSTITUTE AN UNNECESSARY HARDSHIP GIVEN HIS PARTICULAR SITUATION WITH HIS PHYSICAL DISABILITIES AND THE MERITS OF THIS CASE.
4. THE GRANTING OF THE VARIANCE WILL NOT ADVERSELY AFFECT THE PUBLIC INTEREST BECAUSE HERE WE ARE GOING FROM ONE SITUATION INTO AN IMPROVED SITUATION WITH THE PLAN THAT HE

WANTS TO PROVIDE WHICH WILL ALLOW BETTER FIRE DEPARTMENT ACCESS.

5. THE GRANTING OF THE VARIANCE WOULD NOT BE OPPOSED TO THE GENERAL SPIRIT AND INTENT OF THE ZONING ORDINANCE BECAUSE HE IS IMPROVING ALL THE SITUATION FOR NOT ONLY HIMSELF BUT FOR THE NEIGHBORS.

RUANE: Any further discussion on the motion?

COX: If I may. I normally don't butt in too much; however, some Board members know that have been here a while know, that occasionally I do. Over the years we have occasionally put on certain conditions. In a case like this it is very common that we would add possibly a condition, if Mr. Phillips wishes to require, that all necessary permits be obtained prior to construction and possibly a sunset date of one or two years, unless that causes the applicant a problem.

PHILLIPS: No, not a problem at all. In fact, one of the conditions that I thought about applying here but I think your issue with permits would be as long as all local Codes are complied with and that any permit is pulled on this within a certain amount of time in regards to construction.

RUANE: Who made the second on this?

PITTS: I did.

RUANE: Would you consider that a friendly amendment?

PITTS: Yes, I would accept those amendments.

RUANE: Any further discussion?

FOSTER: I wouldn't even bother to change the motion, but it would be somewhat difficult to put this in the backyard. I know what it is like to have a tree back there and try to do this, and so that is part of my thinking as well it is not just the handicap situation.

RUANE: So try and give me a feel for where you want to go with that.

FOSTER: I just want to make a point. I don't want to amend the motion. But, if I were doing it I would just point out that there is some difficulty in putting a detached garage in the rear portion.

RUANE: So let's consider that discussion on the motion rather than a change to the motion.

KNEBEL: Did the motion include a time limit? Is that what I am picking up?

RUANE: Yes, a time limit of 1-2 years, you guys need to pick.

COX: Only if Mr. Phillips thinks it is appropriate.

PHILLIPS: Do you have a time frame for this project Mr. Govan?

GOVAN: Recommend 1-2 years that is fine.

PHILLIPS: I think we need to pick one. We can go with 2 years or 24 months from the date of the approval or the permit or the Variance?

KNEBEL: The Variance.

RUANE: So, I am not going to ask you to read back the motion Rose. The first nice thing that I have done in the last hour and 20 minutes, I guess. Let's please call the question.

MOTION CARRIES 7-0.

RUANE: Thank you for your patience and sorry for keeping you standing at the microphone for so long. J.R. Cox you are up, report from Central Inspection.

COX: I have no report for this meeting.

KNEBEL: We do have some housekeeping items to bring up. As you can see, there are some changes in the room here. They are modifying the City Council Chambers, and the City Council will be meeting in this room and they meet on Tuesday mornings. We are suggesting that you move your meeting time from 1:30 p.m. to 3:00 p.m. to accommodate that, if that is acceptable to the Board.

RUANE: On Tuesday still?

KNEBEL: Yes, it would still be on the fourth Tuesday assuming that the Wichita Eagle publishes the next ad.

RUANE: I will have a conflict ever month.

KNEBEL: Actually it will be just the month of December because there are no applications for November.

RUANE: What is the date in December?

KNEBEL: The 18th I think. Does anybody have a calendar? It is not the fourth Tuesday in December because that is Christmas.

RUANE: So it is the third Tuesday? I can't do it on that day. However the good thing is that just because I am not here does not mean that you all can't have a very good meeting without me.

FOSTER: Do we have an item for December?

KNEBEL: The applications are not due for another three weeks so we don't know at this point.

FOSTER: What date in December?

KNEBEL: December 18th.

PITTS: We will not be having a meeting in November?

KNEBEL: That is correct. There are no applications. We could have a special meeting just for the Bylaws, but I didn't figure anybody would want to do that.

SKELTON: Is the meeting closed?

RUANE: I would entertain a motion to adjourn.

SKELTON moves PHILLIPS seconds to adjourn meeting.

MOTION CARRIES 7-0.

MEETING ADJOURNED at 3:30 p.m.

RUANE: We will see you on the 3rd Tuesday in December at 3 p.m. I will likely not be here.